
MEMORANDUM

TO: Jimmy Knight, Village Manager

FROM: Leonard G. Rubin, Village Attorney

RE: Ownership of the Earman River/C-17 Canal Right-of-Way

DATE: May 22, 2007

CC: Mayor Edward M. Eissey
Charles Cangianelli, Community Development Director

In response to concerns raised by property owners, the Village requested that I investigate the ownership of that portion of the Earman River (also known as the C-17 Canal) adjacent to Plat No. 1 (Anchorage Drive and Anchorage Lane), Plat No. 5 (Northlake Boulevard) and the Plat of Palm Beach Lake Worth Estates (Shore Court). Specifically, I was asked to determine whether the Earman/C-17 Right-of-Way was ever dedicated to the Village.

It is my understanding that North Palm Beach Properties, Inc., formerly known as North Palm Beach, Inc., is claiming ownership of the property underlying the Earman/C-17 Right-of-Way and is requiring adjacent property owners who have constructed docks and other improvements within the right-of-way to either pay for such rights or remove the structures. Specifically, I am in receipt of an e-mail from Tom Hogarth, the owner of property located at 3 Anchorage Lane within Plat No. 1, wherein he contends that his lot extends to the center line of the Earman River. Consequently, according to Mr. Hogarth, North Palm Beach Properties cannot claim ownership of the area upon which his particular dock is constructed.

Having conducted a preliminary review of the plats and relevant deeds, it does not appear that the Village has any ownership interest in the property underlying the Earman/C-17 Right-of-Way.

With respect to Plat No. 5 and the Plat of Palm Beach Lake Worth Estates, the Earman/C-17 Right-of-Way, as defined in the Easement Deeds from North Palm Beach Inc. to the Central and Southern Florida Flood Control District, predecessor to the South Florida Water Management District ("District"), is specifically excluded from each platted lot. The northernmost boundary of each lot appears to be the southernmost boundary of the right-of-way.

With respect to Plat No. 1, the issue is more complicated. North Palm Beach, Inc. obtained title to the land underlying the Earman/C-17 Right-of-Way by Special Warranty Deed dated November 9, 1955 from Bankers Life and Casualty Company. North Palm Beach, Inc. recorded Plat No. 1 on February 17, 1956. In the plat dedication, North Palm Beach, Inc. expressly reserved unto itself, its successors and assigns, the ownership and sole and exclusive use of the Lagoons and Waterways depicted on the plat. In a subsequent document dated January 3, 1957, North Palm Beach, Inc. dedicated the North Palm Beach Waterway, the Azure Lagoon, the Blue Lagoon and the Coral Lagoon to the Village of North Palm Beach. This dedication did not identify the Earman River.

The real issue appears to be the southernmost boundary of the lots along Anchorage Lane and Anchorage Drive. As Mr. Hogarth indicates, the southernmost boundary of the plat appears to extend to the centerline of the Earman River. Using his property as an example, the eastern property line, according to the plat, extends 300 feet from the edge of the Anchorage Lane right-of-way. However, according to the records maintained by the Property Appraiser's Office, the eastern property line extends only 215 feet or so from the Anchorage Lane right-of-way. The reason for this disparity is that the width of the Earman/C-17 Right-of-Way has been "carved out" from the property.

By Easement Deed dated September 17, 1956, North Palm Beach, Inc. granted the District "a perpetual easement and right for and to the exclusive use and enjoyment" of the Earman/C-17 Right-of-Way. As Mr. Hogarth correctly maintains, this easement did not convey ownership of the underlying property and was not conveyed until after the plat was recorded. Therefore, even if the deed conveying his lot to the original owner was executed after the Earman/C-17 Right-of-Way was established, and the owner took title subject to the easement, there is still a question as to ownership of the underlying property.

The issue of ownership can only be resolved by performing a thorough title search on each of the properties and/or litigating the ownership of the property. When each of these property owners purchased their properties, they were undoubtedly given surveys and issued title insurance policies. While I appreciate the concerns raised by Mr. Hogarth, there is no indication, based on my preliminary review of the public records, that the Village owns the property underlying the Earman/C-17 Right-of-Way. Therefore, the issue of ownership appears to be a civil matter between the property owners and North Palm Beach Properties or their title insurers.

Unless the Village wishes to incur the cost of conducting a comprehensive title search regarding the Earman/C-17 Right-of-Way, there is no further action to take at this time. Should you have any questions relative to the foregoing, please do not hesitate to contact me.